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AN ESSAY

Concerning the

LAWS of NATIONS,

AND THE

RIGHTS of SOVERAIGNS.

With an Account of what was said at the Council-Board by the Civilians upon the Question, Whether their Majesties Subjects taken at Sea acting by the late King's Commission, might not be looked on as Pirates ?

With REFLECTIONS upon the ARGUMENTS of Sir T. P. and Dr. Ol.

By Matth. Tindall, Doctor of Laws.

L O N D O N ,

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A N E S S A Y

Concerning the

LAWs of NATIONS,

AND THE

RIGHTS of SOVERAIGNS.

THE Malice of the *Jacobites* is so restless, that it omits no Opportunity to raise Stories, though never so false and improbable; scruples at no Means, tho never so Base and Dishonourable, to reflect upon and expose the Government. What have they not said against it, for designing to try as Pirates those who accepted Commissions from the late King, to take the Ships and Goods of Their Majesties Liege Subjects? So strangely afraid are they, that People should be discouraged from disturbing the Trade and Commerce of the Nation. And to make what they report the more colourable, and the injustice of trying them (contrary, as they say, to the known Laws of Nations) apparent, they have every where dispersed false Accounts of what was said by those Civilians, who, when consulted by the Privy Council upon this Question, Whether Their Majesties Subjects taken at Sea, acting by the late King's Commission,

might not be looked on as Pirates? were of Opinion, that by the Laws of Nations they ought to be so. Whose Reasons (besides all the dirt imaginable that they have thrown on their Persons) they have so represented, by altering, or leaving out what was most material, as to make them appear ridiculous.

The Duty I owe to the Publick, since no better Pen has attempted it, will oblige me to give an impartial Account of the whole Proceeding; which will be sufficient to wipe off all the Lies and Calumnies they have dispersed, and to perswade all impartial Persons, that those who were taken acting by the late King's Commission at Sea, ought by the Law of Nations to be condemn'd as Pirates.

But that the Reader may better apprehend and judge of the Reasons that were urged on both sides, and of the Question it self; it will be necessary to shew, what the Laws of Nations are, and how far Kings and other Supreme Governours are concerned in them.

The Laws of Nations are certain Rules and Customs observed by Nations in their intercourse with one another; which upon the account of their evident and common Profit, as they are necessary for their maintaining a mutual Correspondence, have been constantly practised by them, and are esteemed as Sacred. They are built upon no other Foundation than the general Good of Societies, to which a mutual Correspondence, that could not be upheld but by observing these Rules, is highly necessary.

The several Legislative Powers of Nations never enacted such Laws; nor have all other Nations Authority to oblige any Sovereign Independent State, which

can no otherwise be bound to observe these Rules, but as they tend to the mutual good of Societies. So that the Law of Nations and Nature, is in effect the same. The Law of Nature (I mean that part of it which concerns the Duty of Man to Man) is nothing else but that mutual Aid and Assistance, which by reason of their common Necessities one Man owes to another, without the observance of which Mankind could not well subsist. Which Law, as it respects the duty of single Persons to one another, is call'd the Law of Nature; but as it respects Men collectively as they are Bodies Politick, and the relation they have to one another as such, is called the Law of Nations; who in respect of one another are in the State of Nature, and in their mutual correspondence, are bound by no other Laws but those of Nature.

Though it is generally affirmed by Authors, that there are many things which are meerly Positive, and in themselves Indifferent, that are part of the Law of Nations; yet they no way endeavour to prove it, or pretend to show how long any thing must be practised, or among how many Nations, to make it an Universal standing Law to all Nations.

In a Civil Society, Customs grow into Laws, because it is the Will of the Supream Powers they should. Customs are their presumed or unwritten Will, which they by their express Will may alter as they please. But amongst different Nations, there is no Common Legislative Power; but every Nation is at liberty to act as it pleases. Nor can any Nation be presumed to tie it self up further than their own, or the Common Good of Societies do require it: Nor can they by any Customs, though of never so long continuance, if they are in their Nature indifferent, be any longer bound than they please: provided they publickly declare, that as they intend not to use them

any longer themselves, so they leave others the same liberty. A Nation, it is true, ought not lightly to change what they have generally practised, it looks like affecting Singularity, and being as it were out of the Fashion; but if they do, they break no Law. But I dare be positive, that there is no Custom, except what is obligatory by the Law of Nature, that is Universally received; but in different parts of the World different Customs have obtained, and even among the same Nations at different times different Practices, which are frequently changed, without any Violation of the Law of Nature: And there is nothing merely positive, but where Precedents may be brought on both sides, which sheweth the thing may, or may not, be done, without injury to the Law of Nations.

Among the Heads of the Positive Law of Nations, That concerning Ambassadors is reckoned one of the chiefest; Yet what is more different than the Customs of Nations, or the Opinions of Learned Men about those Rights that belong to Ambassadors, further than they are deducible from the Law of Nature? by which Law the Persons of Ambassadors ought to be inviolable, even when sent to Enemies; because Peace could not be made, or preserved, or Differences composed, which the Law of Nature requireth should be done, except those that are sent on such Errands, should not only be safe, but also be permitted to treat with Freedom, and procure as Advantageous Terms as they can, for the Interest of the Nation that employeth them: What is more than this, or is not necessary for the Ends they are sent, any Prince may refuse it them, provided he be willing his Ambassadors should be treated after the same manner; and not only to Ambassadors of Sovereign Princes, but to any that are sent by private Persons, (as by Merchants upon the account

account of Trade) if Princes will admit them to treat, they must allow them what is necessary in order to it. And further than this, nothing of certainty can be drawn from the Practice of Nations. Nay *Grotius*, who is the great Asserter of the Positive Law of Nations, in his Chapter *de legationum jure*, saith, that even this Question, Whether the Persons of Ambassadors are inviolable? cannot be determined by the Practice of Nations; *De non violandis legatis difficilior est quæstio & variè & a claris hujus seculi ingeniijs tractata, &c.* and at last concludes, *Spectandum ergo quousque gentes consenserint, quod ex solis exemplis evinci non potest, extant satis multa in partem utramq; recurrendum igitur tum ad sapientum judicia tum ad conjecturas.* Where Nations have neither expressly declared, nor are there Examples enough whereon to found their tacit Consent, there can be no Obligation from the Practice of Nations, but from the Matter it self, as it is conducive to the Good of Societies; upon which alone the Judgment of wise Men, as well as all other Conjectures, must be founded.

What looks more like the Positive Law of Nations, than that general Custom of Princes having Persons of publick Characters perpetually resident in one anothers Kingdoms? Yet *Grotius* saith in the foregoing §. *Optimo autem jure possunt rejici que nunc in usu sunt legationes assiduae, quibus quam non sit epis docet mos antiquus cui illæ ignotæ.*

To give but one Instance more, and that too out of *Grotius*, who does not pretend to prove any thing from the voluntary Law of Nations concerning this most comprehensive Question, *Quantum in bello liceat*, but has wholly recourse to the Law of Nature; lib. 3. chap. 1. *Quantum in bello liceat regulæ generales ex jure naturæ.* And §. 5. *Quid liceat in eos qui hostes non sunt aut dici nolunt, sed hostibus res alias subministrant & name & olim & nuper acriter de ea re certatum scimus, alii belli rigorem aliis commercio-*

rum libertatem defendent, &c. - And adds, *Hanc autem questionem ad jus naturae idio resiliimus, quia ex historiis nihil compere potuimus eū de re jure voluntario gentium esse constitutum.* If in these material Points, which constitute so great a part of the Law of Nations, nothing that is merely positive can be deduced from the tacit Consent of Nations, it is very unlikely that any thing of that nature can be proved in Points of less importance.

From each of which Points, Examples, had it been necessary, might as easily have been produced. Nothing can more diminish from the Sacredness of the Law of Nations, than to allow it no other Foundation than the Practice of the generality of Sovereigns; who, like other Men, are governed by Passion, Interest, Ambition, Revenge, and the like; and who are so far from minding the general Good of Mankind, that they very often sacrifice the Happiness and Prosperity of their own Nation to these Passions. How many things are now looked on as lawful in War, and daily practised, which are against all Humanity as well as Christianity; which in former Ages were by several Nations esteemed a Violation of the Laws of Nations?

There is no Subject, about which there are more Mistakes, or which is more confusedly handled by Authors, than this of the Law of Nations; they referring many things to that Law, which are no part of it: even *Grotius* himself, who has writ the most accurately on this Subject, besides other lesser Errors, has a whole Chapter *de jure sepulture*, as a Part of the voluntary Law of Nations. The burying of the Dead is, I confess, an Office of Humanity, and a Matter of Decency; but I can see no reason why it should be reckoned as a part of the voluntary Law of Nations, more than wearing of Clothes, or twenty other things Mankind generally do, either out of Necessity,

Or

or Conveniency, or for other Reasons than the voluntary Law of Nations, or upon the account of any tacit Agreement between them. Several err more grossly, mistaking those Privileges which the Roman Law allowed to Foreigners in common with their Citizens, for the Law of Nations, only because the Romans call'd them *jus gentium*, to distinguish them from those particular Privileges or Advantages the Citizens had above them, which they called *jus civile*: what they called the *jus gentium*, was as much a part of the Law of that Nation; as the *jus civile*; which no other Nation was obliged to observe, but might allow more or less Privileges to Foreigners or Citizens as they thought fit. Others (which Mistake is most common) call That the Law of Nations, which is the Law of Nature properly so termed, and relates to particular Persons, with respect to one another; or else they mistake the Laws of different Countries, when they happen to be the same, for a part of the Law of Nations; which though they be the same in several Nations, yet they have not their Force and Authority from any tacit Compact, but because the supream Powers in each Society have made them Laws, which any one of them may alter without any Violation of the Laws of Nations; because every Nation is a compleat Body-Politick within it self, and may make what Laws, appoint what Government or Governors, and manage their own Affairs within themselves as they think fit.

The Laws of Nations relate to their mutual Commerce and Correspondence, which cannot be maintained but by having recourse to those who have the Power of making Peace and War, and all other Contracts for the Nations they represent; whose Acts are the Acts of the whole Bodies, and bind the Members as much as if each particular Person had consented. It is upon the account of the Power

Power of making these Contracts, that the Governors of each Society are allowed above all others certain Prerogatives by other Nations, over whom they have no Authority, who are no otherwise or further concerned with them, but as they have the Power of making Contracts for the Nations they rule. As it is for their own Interest that private Men make Bargains with one another, so (as I have observed in another Essay concerning Obedience, &c.) the Correspondence that one Nation holds with another is for their own Good; and in their Commerce with one another, they look no further than who those Persons are that have the Power of obliging the Nation they have occasion to make use of. It is not material to them what Right they have to this Power; it is sufficient that the Nation then owns them, and have entrusted them with it. It would be an endless, as well as a useless Task, for Ambassadors before their Admission to prove the just Rights their Masters have to those Powers they are possessed of: and other Princes may well be ignorant of what does not concern them; who, if they have occasion to treat with any other Nation, must apply themselves to those (whatever Right they have to it) that are in possession of the Government. Would it not be ridiculous in the English, or any Nation, who propose any Advantage to themselves by it, to refuse to treat with the present Emperor of the Turks, and to allow him those Rights that belong to Sovereign Princes, because his deposed Brother may have a better Title? Did not the most considerable Nations of Europe court the Friendship of Cromwell; and the French King to obtain it, oblige the two late Kings, then in his Country, to retire from it, without being condemned by others, or even by Them? And did not all Nations with whom the late Protector had any concern, allow him both in matters of Peace and War, all those Rights that

that belong to Sovereign Princes. No Prince is obliged to hold Correspondence, but may refuse to send or receive Ambassadors; as all Protestant Princes deny to hold any Correspondence with the Pope, though he is a Sovereign Prince: yet if one Nation has any concern with another, they must allow the same Rights and Privileges to the actual Goyernor of that Nation, as they expect should be payed to their own. And if a Nation be divided, by a part of them withdrawing their Obedience from the rightful Prince, not only other Soveraigns, but even their lawful One, if he has occasion to treat with them either in Matters of Peace or War, must treat them after the same manner, as he expects to be dealt with himself.

All Leagues and Treaties are National; and where they are not to expire within a shorter time, though made with Usurpers, will oblige legal Princes, if they succeed, and so *vice versa*: and a League made with a King of any Nation, will oblige that Nation, if they continue free, though the Government should be changed to a Commonwealth, because the Nation is still the same, though under different Governments. Which *Grotius* observeth, lib. 2. cap. 16. *Imo etiam si status civitatis in regnum mutetur, manebit sedus, quia manet idem corpus et si mutato capite, non definet imperium esse Populi*: in whosoever Hands they entrust the Management of it, yet still it is the *Imperium Populi*, the Empire of the People. The Leagues which Princes make with one another do not oblige them to one another, longer than they are in possession of their Governments; because the sole Reason of Leagues and Contracts is upon the account of the Power each Nation has to afford mutual Assistance and Benefit to one another; which Reason still continues, though the Person who was

entrusted with the Power of making them be changed ; who then is no further concerned therein, than a Proctor is with a Cause after the Revocation of his Proxy.

Upon this Reason King *Charles* the First, though he made a League, and confirmed it with an Oath, with the King of *Spain* expressly as he was King of *Portugal*, did notwithstanding immediately after receive two Ambassadors from the new King of *Portugal*, who had driven out the *Spaniard* ; and this was not looked on at the Court of *Spain*, either as breaking his League or Oath.

All the Rights and Privileges Princes are allowed by foreign Nations, over whom they have no manner of Authority, is upon the account of the Power they have of making Contracts for the Nation they govern ; which Power when they lose, and no Nation is any longer obliged or concerned in their Actions, they have no more Right to these Privileges than they had before they had this Power. But because the same intercourse will always be necessary between Nations, and Leagues and Contracts must be made, which cannot be made with the whole Body, but only with those who have the Supreme Power, nor with them neither, except they be allowed those Rights and Privileges the dispossessed Princes had ; therefore there is an absolute Necessity of granting them the same ; and the Others must lose them with their Dominions, because more than One at the same time cannot have the same Right, for the same Nation. And though the King of that Country, to which a dispossessed Prince retires, allows him what Honours or Privileges he pleases, as every Supreme Power is at liberty to act in his own Dominions as he has a mind to, and bestow his Favours as he thinks fit ; yet the Titular Prince has no Right by the Law of Nations to claim any of those Privileges that belong to those that have *summum Imperium*, or any More than

than what belong to other private Persons. What Right can he claim by the Law of Nations, when no Nations are any way concerned in his Actions? All Nations, but his own, distinguished him from others, upon no other account, but as he had the Power of making National Contracts. Which Power when he loseth, the Reason of allowing him any particular Privileges above others, wholly ceaseth. And his own Nation, when they have entrusted the Management of their Affairs in other hands, are no more concerned with him than Foreigners are; so that such a Prince is wholly reduced to a private Estate, without a Kingdom, nay without a Country that he can call his Own, and at the best can be but esteemed a Subject, during his stay, to the Government of that Society he retires to, because there cannot be *Imperium in Imperio*, or more than one Sovereign in the same Society. Where he is so far from having a Power of making Peace or War, or any other National Contracts, that he cannot without leave send to Princes, or receive Any sent by them, much less allow Them that are sent those Privileges which are due to Persons of a Publick Character: and it would be unreasonable that Sovereigns should be obliged to allow those Privileges to him, who is uncapable of returning the same. And it is evident, that Sovereigns have none of those Reasons to forbear exercising a Coercive Power over him, as they have over an Ambassador who, as *Grotius* saith, *cap. de leg.* if he commits *crimen atrocium*, & *ad publicum malum spectans*, *mittendus erit ad eum qui misit*, *cum postulat ut cum puniat, aut dedat*. But to whom can a dispossessed King be sent, or who will give satisfaction for any Crime he commits? Why may he not be punished without Violation of the Laws of Nations, or Injury to any Nation whatever, since no Nation owns him so much as to be of their Body? Therefore the King

in whose Dominions he is, may, if his Crime deserve it, punish him with loss of Life, as Queen Elizabeth of blessed Memory, did *Mary Queen of Scotland*.

There is no Reason in Nature, either from other Nations, or from the Person himself, why he may not be punished by that Government under which he lives, as well as any other that makes use of the Protection of it. For whosoever makes use of the Protection of any Government, owns himself (as I think I have sufficiently proved in my Essay above-mentioned) a Subject of that Government, and consequently makes himself liable to be punished if he transgress the Laws. And *Grotius* saith, *cap. de leg.* It is the Law of Nations that all, but Ambassadors, are Subjects to the Prince in whose Territories they are. His Words are clear, *Placuisse gentibus ut communis mos qui quenvis in alieno territorio existantem ejus loci territorio subjicit, exceptionem pateretur in legatis, ut qui sicut fictione quadrum habentur pro personis mittentium (senatus faciem secum attulerat, auctoritatem reipublicæ, ait de legato quodam M. Tullius) ita etiam fictione simili constituerentur quasi extra territorium*: It is only their mutual Good that hinders Princes from exercising this Right over Ambassadors, because each Prince expects the same for his Own in Another's Territories; but there can be no such Reason urged in favour of a dispossessed King, who carries no publick Authority with him; or in what other Country shall he be supposed to be in, since he has no Country he can call his own?

Having proved in general, that a Prince that has no longer the managing the Affairs of a Nation, has no Right to any of those Privileges that belong to them that have *summum Imperium*; and therefore such a Prince being fallen from a publick to a private Condition, and under the Power and Government of another, can have no more Right than any other

other private Person to grant Commissions to private Men of War to disturb the Trade and Commerce of any Nation ; and that they that act by his Commission may be dealt with, as if they acted by their own, or the Authority of any private Person ; because there is no manner of inconvenience which will happen upon a private Person's granting such Commissions, but the same will happen, if a Prince grants them after he is reduced to a private Condition, they being both then in the very same Condition.

What other way have Nations to secure their Trade, or hinder their Ships or Goods from being taken, but by treating them as Pirates who Rob by such a Commission ? There is no way of making a Titular King weary of granting such Commissions, as long as he can find People willing to accept and act by them. Nothing can oblige him, who runs no risque of losing any thing, but may get a considerable Booty by what his Privateers take, as well as disturb and molest his Enemies, to forbear granting such Commissions. No Reprisals to be made, because he has no Ships to lose but those of the Privateers, whose Interest it is that such Robberies should be continued. He has no Trade or Commerce to be ruined. There is no way of making him desist by invading his Territories, since he has none to be invaded. In short, he has nothing to lose by Sea or Land, and by consequence no way of making him weary of eternally granting such Commissions. Therefore Nations have no other way to hinder the disturbing their Commerce, but by using the utmost Rigor against such as accept his Commissions, that by the terror of the Example they may fright others from attempting the like.

What if such a Prince should grant Commissions to seize the Ships and Goods of all or most Trading Nations ;

ons; which may easily be supposed, since he may get a considerable livelihood by sharing the Spoil with his Privateers; who if they were to be treated as Enemies, out of hope of Booty, would in mighty Numbers infest the Seas. Would it not be madness in those Nations not to make use of the utmost Rigor to secure their Ships and Trade? And if several Nations may use this Method, why may not any single one, since any one Nation has the same right to secure their Trade, as any Number whatever? But supposing he should grant Commissions to take the Ships but of a single Nation, yet in effect it would be to grant a general Licence to rob; because those who are so commissioned, would be their own Judges of whatever they took, whether it were lawful Prize or not; because in another Princes Territories whither the pretended Prizes must be brought, the ousted Prince could not pretend to so great a Power, as to erect a Court of Judicature to judg according to the Maritime Laws, concerning the Ships and Goods that are taken: How can he whose very being in a Country is precarious, and may be banished every moment, claim a right to a power of Life and Death, or to force Witnesses to give attendance, and all other things that are necessary for such a Court? Or how can he be able to restore Ships, though never so unjustly taken, that are in the Ports and Custody of another King?

It is true, Sovereigns have sometimes forbore to punish a Titular King for privately destroying a Domestick; but this is no Right he can pretend to by the Law of Nations, but only by the Permission of that King in whose Dominions he is. It was usual for the Supreme Powers in many Nations to allow Masters a power of Life and Death over their Servants; insomuch that *Caius Inst. lege de his qui suis juris vel alieni*, saith, *Dominorum protestas juris gentium est,*
natus

nam apud omnes peraeque gentes animadvertere possumus Dominis in servos vite necisq; potestatem fuisse. And by the Roman and Carthaginian Laws, even Parents had the same power over their Children ; and in several Countries at present a private Person in many cases, particularly that of Adultery, may kill the Adulterer and his Wife too, if he takes them in the Fact, without being punished for so doing.

The Ambassadors of Sovereign Princes, as *Grotius* observes, l. 2. cap. 3. have by the Law of Nations no right to exercise Jurisdiction in their own Families ; *ipse autem legatus an Jurisdictionem habeat in familiam suam, & an jus asyli in domo sua pro quibusvis eo fugientibus, ex concessione pendet ejus apud quem agit? istud juris gentium non est.* If the Ambassadors of Sovereign Princes (who, as he saith, *fictione quadam habentur pro personis mittentium*) cannot pretend to this Power, there is infinitely less Reason for a Dispossessed King to Claim a Power that is so much greater, viz. that of erecting Publick Courts of Judicature.

Therefore his granting Commission to Privateers, is but granting them Authority to rob whom they have a mind to ; who being Judges in their own Cause, cannot be supposed, but will judge all that comes to their Net to be Fish : and Nations have no reason to take notice of his Commission, which can have no manner of effect ; since he that grants it, is no ways able to hinder them that take it, from acting as they have a mind to ; nor is he able to punish them, if they never so much exceed the bounds of it ; nor can he restore Ships, though never so unjustly taken ; nor is he able to give any satisfaction for any Injustice his Privateers shall commit. So that it is evident it is against the good of Mankind, and consequently the Law of Nations, to allow a Prince that is reduced to a private Condition, a Right to grant such Commissions.

But

But it may be said, that the Government under which this King is, may give him sufficient Power to judge in these matters.

This Argument will as well hold for any private Person whatever, because the Government may allow him the same Power as it can any exiled Prince.

The Laws of Nations are built upon Certainties: and if a Person has no right to a Power, to which certain Privileges are annexed, he has no right to the Privileges, though it were possible that a King may allow him such Privileges, which he can enjoy but during his pleasure; and other Nations, as they are presumed to be ignorant of this, so are not obliged to take notice of it: Nor can there be any instance, where a dispossessed Prince was allowed to erect a Court of Judicature in another King's Dominion; it is erecting *imperium in imperio*, and none but he that has Supream Power, can be a Supreme Judge, and all inferior ones act as his Ministers, and must be subject and accountable to him.

Perhaps it may be said, The King himself, into whose Dominions the Prizes are brought, may judge concerning them.

But what if he will not? he is not obliged, nor can he have a right to judge or punish those that acted, not by his, but another King's Commission for what they did *super altum Mare*; for he cannot have a right to punish them, except they are his Subjects, even whilst they acted by Another's Commission: and the same reason that makes them his Subjects, will make the exiled King so too; and consequently a private Person, without Power to grant Commissions to his Fellow-Subjects.

All Authors both Modern and Ancient who have written on this Subject, have esteemed none Enemies but those that have *summum imperium*, and all others either Robbers, or

or Pirates. And *Albericus Gentilis*, l. 1. *De jure belli & pacis*, cap. 1. and *Grotius*, l. 3. cap. 3. do define an Enemy to be one, *qui habet Rempublicam, Curiam, Aerarium, consensum & concordiam civium & rationem aliquam, si res ita tulerit, pacis & fœderis*: which in other words is but *summum imperium*, because the Supreme Power in any Society must have all these. And this they prove was looked on as the Definition of an Enemy, even in *Cicero's* time, who quotes it, *Philip.* 4. as a known Definition or Description of an Enemy. And I believe there is nothing in which Nations so unanimously agree, as in esteeming none but him that has *summum imperium* an Enemy, and all others Robbers or Pirates; and there can be no instance given, where any though at first they were Robbers, Pirates, Rebels, &c. yet when they had Dominions, and possessed *summum imperium*, were not treated as Enemies. *St. Austin de Civ. Dei*, l. 4. c. 4. speaking of Robbers, *Hoc malum si in tantum perditionum hominum accessibus crescit, ut & loca teneat, sedes constituat, civitates occupet, populos subjuget, Regni nomen assuet*. And the beginning of most of the great Empires were not much better: whatever any were at first, yet when they had formed themselves into Civil Societies, where Foreigners as well as Subjects might have Justice administered, then they were looked on as Nations and Civil Societies; and in their Wars with other Nations, used as Enemies. But until any Number of Men were a Civil Society, and did associate for the sake of Laws, Justice, Government, &c. they were esteemed as Pirates and Robbers: so all Authors do agree, that those, *Qui civitatem non faciunt sunt pirate & latrones*; and are supposed to associate *Sceleris causa*, for the sake of Piracy or Robbery, or some other wicked end. But if, as *Grotius* observes, l. 3. c. 3. a Change happen, and they form themselves into a Civil Society, then they have all the Rights that belong

belong to other Civil Societies, his words are these, *Protest tamen mutatio incidere non in singulis tantum, sicut Iephates, Arsaces, Viriatus, ex prædonum ducibus justi duces facti sunt, sed etiam in cætibus, ut qui prædones tantum fuerint aliud vi- ta genus amplexi, civitas siant.* So of later Years Argiers, Tripoly, Tunis, though at first but Nests of Pirates, and associated for the sake of Spoil and Plunder, yet as soon as each of them had the face of a Republick, they were esteemed as just Enemies, and had all those Privileges allowed them that are due to Sovereign States.

Albericus Gentilis, l. i. c. 4. seems to be of another Opinion ; and after he has reckoned some few whom he is forced to allow, that they from Robbers became Enemies, saith, it was only the Cause that made them so. *Quodque fiet non tam justi exercitus audi, & urbium interceptu, ut scrip- tores isti & alii Historici credere videntur, quam adēptione publica cause.* However he is of this Opinion himself, yet he is forced to confess, that all the Antient Historians and other Writers were of a different Opinion. If he mean by a *Publick Cause*, a just Cause of War, and none but those that have such a Cause should be treated as Enemies, all Mankind would treat one another as Robbers and Pirates ; because each Party pretend their Enemies have no just Cause of War, and there being no Superior to judge, each side must judge for themselves ; and where there is no Common Judge, in which both sides will acquiesce, the pretence of Right can be urged to no purpose, since each side pretends to be in the right : so that there is a necessity for those that have *summum imperium*, whatever the cause of the War be, to use one another as Enemies ; and those that have acted otherwise, have been esteemed by the rest of Mankind as infringers of the Law of Nations. It is true, some, especially the great Conquerors, as *Alexander*, and the *Saracens*, as he obser-veth,

veth, have been called Robbers, and really were so ; for whoever without a just Cause, invadeth his Neighbours Rights, as they did, is a Robber ; yet they were always treated as just Enemies, as were the Saracens by the Christians. Nay, Grotius gives instances of several Nations, who without any distinction exercised Piracy, yet were allowed the Rights of Enemies, because they were a People : *Tantum discriminem est inter populum, quantumvis sceleratum, & inter eos, qui cum populus non sunt, sceleris causa coeunt.* If *Gentilis* by a Publick Cause, means some National Cause, and that the War, to make it just, must not be for private Causes or by-Ends, but for the sake of the People ; all that have *summum imperium*, what way soever they get it, as it is their Duty to protect those that are under them, and make War with those that endeavour to oppress them, will have the same Publick Causes of making War as any Kings whatever. As *Arsaces* whom he mentions to have a Publick Cause, had none to withdraw his Obedience from the *Macedonians*, who had been so long time Lawful Kings of *Persia* ; yet after he had made himself Master of *Persia*, might have a Publick Cause, upon the account of that Nation, of making War. The same may be said of all other Usurpers.

As Robbers and Pirates become just Enemies, when they form themselves into a Civil Society ; so a King that loseth his Empire, and can no longer protect People, or administer Justice, dwindles into a Robber or Pirate, if he grants Commissions to take the Goods or Ships of any Nation ; and they that accept Commission from him, are presumed to associate *Sceleris causa*, and cannot be reckon'd as Members of a Civil Society ; since he by whose Commission they act, nor any other of their number, can administer Justice, or do any of those things that are essential to a Civil Society : there is none amongst them, let

them break the Laws of Nations, or any Other Laws to punish them ; or let them be never so injurious to other Nations, there is none to make Satisfaction or do Justice on the Offenders ; and is there not all the reason in the World, that Nations should do themselves Justice in punishing the Criminals according to their demerits ?

Whoever pretends to the Dignity of being esteemed an Enemy, must have a Power of making Peace and War ; *Hostes sunt, ait Sempronius, qui nobis aut quibus nos bellum decernimus.* So *Olpianus* ; *Hostes sunt quibus bellum publice Populus Romanus decrevit vel ipsi Populo Romano, ceteri latrunculi vel prædones appellantur.* And *Grotius* saith upon quoting these Authorities, lib. 3. cap. 3. *Sub exemplo Populi Romani quemvis intelligi qui in civitate summum Imperium habeat :* There is no Government declareth War against a private Person, though he retains the Title of a publick One ; and it would be ridiculous for a private Person that has no certain Habitation, but is in a manner a Vagabond, to pretend to declare War, since he cannot do it for any Nation, but only for himself.

The English have neither Peace nor War with the late King, and look on him as a private Person incapable of making either ; and to allow him now any of those Rights that belong to publick Persons, would be in a manner acting inconsistent with themselves, and contradicting their former Declarations.

As he that is reduced to a private Condition, has no Right by the Law of Nations to be treated as an Enemy ; so on the contrary, whosoever has *summum Imperium*, because the general Good of Nations requires it, and consequently it is a part of the Law of Nations, must have a Right to be treated as an Enemy ; nay, it is the Interest of the adverse Party, *flagrante bello*, to treat even Rebels so ; because as they use them, so they must expect to be used

used themselves. The Pretence of Right (as I have already said) where there is no Superior to judg between the contending Parties, in whose Determination both Sides will acquiesce, is to no purpose. If one Side call the other's taking up Arms Rebellion, they on the other hand term it a just War in defence of their Rights and Privileges; and will be sure upon all Occasions to return like for like: So that it is plain, it is the mutual Good of both Parties to treat one another as Enemies. So in the Civil Wars of *England* and of *France*, and of the Romans, they treated one another as Enemies. It is true, that in the Civil Wars of the Romans, there was not as in foreign Wars, any use of the *Postliminium*; nor did they triumph after Victory. But these were Customs proper to that State, and no part of the Law of Nations. In the beginning of the Civil Wars in the *Low-Countries*, the haughty Spaniard at first used the Hollanders as Rebels, but he quickly was weary of that Sport, and consented to a Chartel.

For the same Reason, the present Government, during the War, treated their rebellious Subjects in *Ireland* after the same manner: For as long as they had an Army in the Field, and were Masters of fortified Towns, they were esteemed and used as Enemies: But what Pretence can any of that Party have of being treated so now?

Would it not be very absurd in the Tories, though they plundered Passengers, and robbed Market-people by the late King's Commission, to expect to be used as Enemies? Is there any more Reason they should be more favourably dealt with for robbing at Sea by his Commission, considering they have no Fleet, no Ports, nor Harbors?

But it may be urged in behalf of those that have the late King's Commission, that they ought to be used as Enemies; because if they are used otherwise, all that they take must expect to be dealt with accordingly.

Ans^w. The same Argument will hold for all other Pirates and Robbers, who may use all that fall into their hands, as they themselves are used; and the Consequence of granting them such Usage would be, that the Seas would quickly be full of Pirates, and the Land of Robbers. If it were for their Interest, there's no doubt Pirates would serve all they take so; but they know if they did, they should not only miss of the Booty they might otherwise expect by Peoples not being so much on their guard, but that most effectual Means would be taken to extirpate them.

But if it should happen to be against the Publick Good (of which the Government is the Judg) to punish them as Pirates, there is no doubt but they ought to be dealt with more mildly; so all other Criminals ought to be spared, when it is against the Publick Good to punish them.

Obj. It may be said, If a King is unjustly deposed, he has still a Right to his Kingdom, and consequently to all that is in order to recover it.

Ans^w. All Nations, except his own, allowed him these Privileges and Rights upon no other account, but as all Busines of Peace and War, and Commerce, that concerued his Nation, was managed by him: what his Right was to that Power, That depended upon the Laws of his Country, with which they were no way concerned; therefore when he lost that Power, he with it lost all the Right he had of claiming from them any Privileges above other Persons, and consequently his Pretence of Right can be no Argument for them not to treat his Privateers as Pirates. As for his own Nation, they have already adjudged he has no Right to command them, and have placed the Administration of their Affairs in other Hands: so that the Argument drawn from a pretended Right that is not owned by the Nation that deposed him, can signify nothing

nothing either to Foreigners, or to them who have then the same Reason, as all other Nations, to condemn as Pirates all that act by his Commission.

In short, let a Prince's Right be what it will, if the utmost of his Power extends only to the giving Commissions to a few People, whom he can persuade to set out Vessels at their own Charge, to disturb the Trade of a Nation, which can only tend to exasperate and vex them; That cannot, in common Understanding, be reputed a just Design to recover his Kingdom, or to conquer his Enemies; but only a Pretence to let those People that act by his Commission, enrich themselves by exercising Piracy; which is such an odious thing, that Nations cannot be too careful in punishing whatever tends that way. Besides, the Laws of Nations respect the general Good of Societies more than the Right of any particular Person; who, to speak properly, can have no Right when it is inconsistent with the Good of the Society, because a particular Right always give place to a general Good; and the Interest of a King, when he has no longer the Management of the Affairs of any Nation, is no more sacred than that of any other private Person, who by Nature is his equal: it was only the Office which is sacred, because it is so necessary for the Good of Mankind, that made the Difference: which when he is no longer possessed of, he is but upon the same Level with the rest of Mankind; and then the Peace and Quiet, or Trade and Commerce of a Nation ought not to be disturbed more for his, than any other particular Person's Interest. And People, who have a Right even to the Lives of their Enemies, use them, when the mutual Good of Societies do not forbid it, after the same manner as they do Pirates and Robbers; and they use all Spies, and those that privately attempt the Lives of their Enemies, whatever Right the Prince has that employs them, as Pirates;

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The Pretence of his Right who employs them, will be no manner of Plea to prevent their Execution : And the same Reason, the Good of Societies, does more strongly require the putting those to Death that rob by the Commission of any private Person whatever.

Besides these Reasons, which I think are sufficient to prove them who were taken acting by the late King's Commission, Pirates, there is another unanswerable One, from the Persons who accepted the Commission : Who being their Majesties Subjects, (and which the Question that was put to the Civilians justly supposeth) were morally incapable to receive such a Commission ; it was not in their Power to take a Commission from any King whatever to invade, in a hostile manner, the Ships and Goods of their Fellow-Subjects.

The accepting the Commission was Treason, and no Commission whatever can authorize People to commit Treason ; so that the Commission was null and void as well upon Their account that received it, as His that granted it.

These Reasons, or at least what is most material in them, the Heads of them (I will not pretend they were then as fully and largely handled as they are here set down) were urged either by Dr. Littleton or my Self : He did not, upon a Question where so much could be said, leave out, as it were on purpose, what was most material, nor did not, as the sham Account reports, only say, That the late King had no right to grant Commissions, because he had no Treasury or *Aerarium*, and because there was no War between him and *England*, or somewhat to that effect : Nor did I (as the Account will have it) without offering at any Reasons my self, assent to what he said, but not only then, but (since I am in a manner forced to say so much) when

I gave my Opinion in Writing, I made use of what I thought most material in these Arguments.

It is a great Sign of the Weaknes of their Cause, as well as their Disingenuity, that they dare not repeat the whole Matter of Fact; but only relate so much of the other side, as they think may serve to give a better Glos to what they, without any respect to Truth, have thought fit to divulge: but they were under a kind of necessity of so doing, (and which is the only Excuse the Matter is capable of) since they had no other way of making what they pretend was said by them appear tolerable, but by representing what was said by those of the contrary Side (if it were possible) more absurd: And it is no wonder where People have neither Law nor Reason on their side, that they have recourse to Lies and Calumnies, the usual Arts of that Party, and the only Props they have to support their so often baffled Cause.

But to return; The Occasion of sending for the Civilians, after some of them that were consulted had given their Opinions in Writing, was, as the Lords told Sir T. P. and Dr. OI. (who had declared that they were not Pirates, without offering to shew the least Reason why they were of that Mind) to hear what Reason they had to offer for their Opinion.

Then Sir T. P. said, It was impossible they should be Pirates, for a Pirate was *hostis humani generis*, but they were not Enemies to all Mankind, therefore they could not be Pirates: Upon which all smiled, and one of the Lords asked him, Whether there ever was any such thing as a Pirate, if none could be a Pirate but he that was actually in War with all Mankind: To which he did not reply, but only repeated what he had said before. *Hostis humani generis*, is neither a Definition, or as much as a Description

tion of a Pirat, but a Rhetorical Invective to shew the Odiousness of that Crime. As a Man, who, tho he receives Protection from a Government, and has sworn to be true to it, yet acts against it as much as he dares, may be said to be an *Enemy* to all Governments, because he destroyeth, as far as in him lieth, all Goverment and all Order, by breaking all those Ties and Bonds that unite People in a Civil Society under any Government: So a Man that breaks the common Rules of Honesty and Justice, which are essential to the well-being of Mankind, by robbing but one Nation, may justly be termed *hostis humani generis*; and that Nation has the same right to punish him, as if he had actually robbed all Nations.

Doctor Ol. said, that the late King, being once a King, had by the Laws of Nations a Right to grant Commissions; and that though he had lost his Kingdoms, he still retained a right to the Privileges that belong to Sovereign Princes. It was asked him by one of the Lords, whether he could produce an Author of any Credit, that did affirm, that he that had no Kingdom, nor right to any, could grant Commissions, or had a right to any of those Privileges, that belong to Sovereign Princes? and that no King would suffer those Privileges to be paid to *Christina*, when she ceased to be Queen of *Sweedland*; and that it was the judgment of all the Lawyers, that ever mentioned that Point, that she had no right to them; and he did hope, that those that had sworn to Their present Majesties, did not believe the late King had still a right: and that that Point was already determined, and would not be suffered to be debated there. To which he answered, that King *James* was allowed very lately the Rights of a King, and that those that acted by his Commission in *Ireland* were treated as *Enemies*, and People that followed his Fortune, might still

still suppose he had a right, which was enough to excuse them from being guilty of Piracy.

One of the Lords then demanded of him, if any of Their Majesties Subjects, by virtue of a Commission from the late King should by force seize the Goods of their Fellow-Subjects by Land, whether that would excuse them from being guilty at least of Robbery? If it would not from Robbery, why should it more excuse them from Piracy? To which he made no Reply. Then the Lords asked Sir T. P. and him, whether it were not Treason in Their Majesties Subjects, to accept a Commission from the late King to act in a hostile manner against their own Nation? which they both owned it was, (and Sir T. P. has since, as I am informed, given it under his Hand, that they are Traitors.) The Lords further asked them, If the seizing the Ships and Goods of Their Majesties Subjects were Treason, why they would not allow it to be Piracy? because Piracy was nothing else but seizing of Ships and Goods by no Commission; or what was all one, by a void or null one, and said that there could be no Commission to commit Treason, but what must be so: To which they had nothing to reply, only Dr. Ol. (not by way of Answer to one of the Lords, who, as the Jacobitish Account supposeth, made use of it as an Instance for the other side) pretended to quote a Precedent, which he said came up to the present Case, about *Antonio King of Portugal*, who (as he said) after he had lost his Kingdom, gave Commissions to Privateers to seize upon all Spanish Vessels, whom, as the Spaniards met with, they hanged as Pirates; (so far his Precedent is against him) but an Author without naming him, was of Opinion, as he said, that if *Antonio* had ever been a rightful King, that then the Spaniards ought not to have treated those, that acted by his Commission, as Pirates. This was all that was said by the

Doctor in behalf of the late King's Privateers, upon which I must beg leave to make a few Reflections. As to those Privileges which were allowed the late King in Ireland, they were not allowed him upon the account of any Right, nor was it an owning that he had any Right to that Kingdom, but barely as he was in Possession; for then he had *Rempublicam, Curiam, &c.* and consequently a Right to be treated as an Enemy; and not only he, but whoever had been in Possession would have had a right to have been used after the same manner, and is no more than what is practised in all Civil Wars, where there are just Forces on either side. These Privileges being allowed him when he was a publick Person, and in possession of a Kingdom, could be no just reason to induce any to imagine that they would be permitted him when he was reduced to a private Condition; much less is it such a Presumption as is sufficient to excuse them, who acted by his Commission, from suffering as Pirates. The very taking a Commission from him, after he was reduced to a private Condition, to act against their own Nation, was a Demonstration that the Government was no longer in his, but other Hands, who could not reasonably be presumed would allow that he had still any Right, or that they that acted by his Commission should be dealt with as if he still had a Right; but that they should be used as if they acted by no Commission, or what is all one, a null or invalid one. Their pretending to believe he has still a Right, is no more an excuse in the Case of Piracy, than of Treason, which every Traitor may pretend to.

As to the Story of *Antonio*, the Doctor is (to suppose no worse) abominably mistaken in the very Foundation; for they that suffered by the Spaniards as Pirates, were French, who had not their Commissions from *Antonio*, but from

from their own King, as *Albericus Gentilis*, who mentions this Story, *Lib. I. cap. 4.* saith, *At ipsa Historia vincat eos non fuisse Piratas, per literas quas Regis sui ostendebant, cui Regi serviebant, non Antonio, et si maxime pro Antonio, quod illos non tangebat.* And *Conestaggius*, who is the Historian he refers to, and who has given an excellent Account of that War, saith it was the Royal Navy of *France* (which is very improbable did act by any Authority but that of the French King's) set out, as he words it, *Regis sub Auspiciis*, with which the Spanish Fleet engaged, and had the good fortune, after a long and bloody Fight, to rout it, and took above five hundred Prisoners, of which almost the fifth part were Persons of Quality, whom the Spanish Admiral was resolved to sacrifice as Pirates, because the French King, without declaring War, had sent them to the Assistance of *Antonio*: Against which Proceedings the Officers of the Spanish Fleet murmured, and represented to their Admiral, that they were not Pirats, because they had the French King's Commission; but That they chiefly insisted on, was the ill Consequence it would be to themselves, who, if they fell into the hands of the French, must expect the same Usage. As to the French King's assisting *Antonio* without declaring War, they supposed, that before the Sea Fight, the two Crowns might be said to be in a State of War, by reason of frequent Engagements they had in the Low-Countries. This is the Account *Conestaggius* gives of it, which, how little it is to the purpose the Doctor quoted it for, is so visible, that there is no need of any words to shew it. But granting (as the Doctor supposeth) that *Antonio* never had any Right, or at least, the Spaniards would never allow he had any, yet it is evident from the Historian, that they allowed him, during Possession, the same Privileges as the late King had during the War in *Ireland*: And if the Spaniard, by the Law of Nations, after

after *Antonio* was driven from his Kingdom, might treat those that acted by his Commission as Pirates, why may not the English deal after the same manner with those that act by the late King's Commission, since they look on him to be in the same Condition as the Spaniards did on *Antonio*, without a Kingdom, or Right to one? What difference can That make, that one had never a Right, and the other, though he had once a Right, has lost it?

These two Civilians, I believe, are the only Persons pretending to be Lawyers, that are of Opinion, that a King without a Kingdom, or Right to one, has by the Law of Nations a Right to grant Commissioners to Privateers, especially if they are Subjects (as they have acknowledged it) to that King, against whom, they by their Commissions are to act. Upon what account can such a Person claim these Privileges? or for what Reason should Mankind pay them to him, more than to other private Persons? Are these Privileges like the Charms, or indelible Characters, the Papists say, are inseparable from the Persons of their Priests? which, whatever it be in Ecclesiasticals, is no small Bigotry and Phanaticism in Civil Affairs. And it is the height of Folly, Madness and Superstition, to believe that the People, who have entrusted some one amongst them with Power for no other end but for protecting them, can upon no account whatever resume it.

To speak somewhat against this Notion, cannot be unseasonable or impertinent, because it is not only the Foundation of these false Notions which I endeavour to confute, but of almost all others that concern the Rights of Sovereigns.

The only innate Principle in Man is to seek his own Happiness, and consequently it is his Duty to pursue it; otherwise God would not have imprinted it so deeply on his Mind, that it is impossible for him not to desire it: and

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it is the Source of all his Actions, and the Foundation of his Duty to God and to Man ; there being no Reason why a Man should be obliged to do any thing, that no way promotes his Happiness ; which, as to this Life, considering his Weakness and Infirmities, he is not able to procure, without the Aid and Assistance of others ; which, as the only way to obtain, he ought to be as ready to assist them, and do by them as he expects they should do by him : and, as it is evident, the Duty Men owe to one another, tends to the Happiness of each individual Person, so the neglect of it would be to the Loss and Detriment of each particular : and the more any one is obliged, the more zealous he ought to be to make suitable Returns ; because there is no Virtue that more encourageth People to do Good to one another, and consequently is more beneficial to Man, than Gratitude. And this is the Reason of the Duty that Children, for the sake of their Being and Education, owe to their Parents. The Relation between Parents and Children, is called a Natural Relation, because it does not come by Compact and Agreement, as all others do, which Men enter into for their own sakes ; and where-ever they oblige themselves to serve others, either by the Labour of the Mind or Body, it is for some suitable Return : and in all Relations of Life, there are reciprocal Duties ; for the sake of which alone, Men entred into them, and consequently designed to oblige themselves no longer to them, than they receive these Returns. It is repugnant to that natural Equality that is amongst Men, that all should be due of one Side and nothing of the other : In all Relations the Duties are conditional, and can oblige no longer than they are performed on both sides ; because each Party would not have bound himself but for the sake of the Return. Where Numbers enter into any Relation with a single Person, as when they engage

to pay him Obedience, there it is most evident that they would never part with their Liberties, and give to a single Person so great Power over them, but for the sake of some suitable Return ; which can be no other than the Protection they receive by Government, which was the sole Motive, Reason and Design of their becoming Subjects ; nor can they be presumed to intend any thing but their common Good, nor to pay Obedience upon any other Terms or Conditions, but for the Protection they are to receive : nay, had it been possible for Men to design it, they were morally incapable of binding themselves contrary to their Common Good and Prosperity. Though Protection cannot be had without Obedience, yet Obedience is only the Means, and in order to Protection ; which is the End for which alone Obedience is due ; and where that End cannot be had, all Ties are absolutely broken. And this has been the Sense and Practice of Mankind, who have always submitted to new Governors when their old Ones became uncapable to protect them : But the Reason is much stronger, when instead of protecting, they design to oppress and ruin them ; then their own Good, which at first was the sole Reason of their Obedience, does as much oblige them to oppose them, as ever it did to submit to them.

The Doctrine of Absolute Obedience is inconsistent with the Goodness of God, and the Love he has for Man ; and is destructive of the End, Intent and Design of God's Laws, which is Man's Happiness. For God, who is infinitely happy in himself, could have no other Motive but Man's Happiness in those Rules he has given him to walk by ; and for that Reason has made it a Duty in him to help the Poor and Miserable, relieve the Oppressed and Distressed, and do all manner of Kindnesses and good Offices to one another. Can it then be presumed, that he required Obedience to

Arbitrary

Arbitrary Power, which brings Poverty, Misery and Desolation on a Nation. If it be Duty to relieve the Poor and Oppressed, it must as much so, to hinder People from falling into that miserable Condition, which they cannot prevent except they have a Right to oppose Arbitrary Power. And if it be a Duty to promote the Publick Good, which they cannot do if they are obliged to submit to Arbitrary Government, it must be their Duty to oppose it.

In short, there is no Duty that a Man owes to his Neighbour, or himself, but does oblige him to oppose Arbitrary Government; and so does that Honour and Duty which Man owes to his Maker, which cannot more be shewn, than in imitating him, by promoting the Good and Happiness of his Fellow-Creatures: *He that does not love his Brother whom he has seen, cannot love God whom he has not seen.* But the endeavouring to enslave his Brother, is no Argument of any great Love he bears him. Absolute Obedience tends to the Dishonour of God, as it naturally tends to introduce gross Ignorance and Superstition, which perhaps is the chief Reason that some Men so highly promote it, because then they may be the better able to impose what selfish Doctrines they please, and tyrannize over the Consciences of their Brethren.

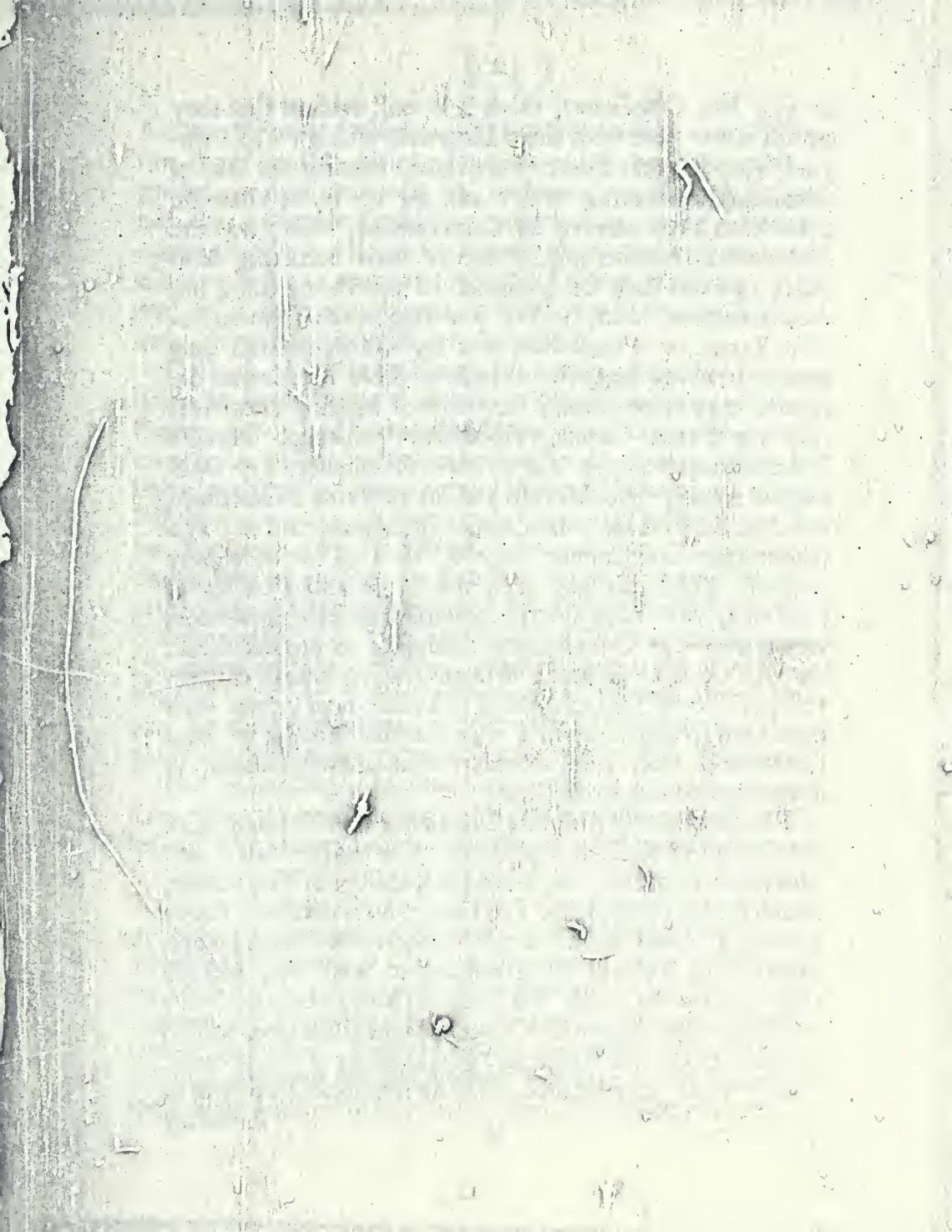
The promoting Absolute Obedience, is a much greater Crime than the encouraging any Rebellion whatever; because a Civil War, though during the time it lasts is very sharp, yet it cannot, especially in a Country where there are no fortified Places, continue long, and a Nation may flourish and be happy again. But if once Arbitrary Government be introduced upon the Principles of Passive Obedience, Peoples Miseries are endless, there is no prospect or hopes of Redress: Every Age will add new Oppressions, and new Burdens to a People already exhausted. If he, by God's Command, was to be cursed that removed his Neighbour's Land-mark, what Curses must they deserve that make it their Business to remove all

the Bounds, Fences, and Securities that People have, not only for their Lands, but their Liberties and Lives, and prostrate them at the Feet of a single Person? If it be so great a Crime, that upon no account, as they pretend, it is lawful to change the Person that has the Executive Power. how much greater must their Crimes be that destroy the Constitution, and subvert the whole Government, and set up a new one that is infinitely worse?

This I think is sufficient to show that the People have a Right, especially in a limited Government, where they are Subjects no farther than the Laws require, to defend their Liberties and Privileges; and that a King by endeavouring to ruin and enslave them, has lost all the Ties he had to their Obedience, and has no longer a Right to command them; and they may then place the Administration of their Affairs in other Hands; which when they have done, what reason have they to allow him, that designed to ruin and enslave them, greater Privileges than any other private Person, who never intended them any Mischief? Or what reason have other Nations to allow him those Privileges, which they cannot without Injury to themselves, pay to any but those that have *summum Imperium*.

But to return; Dr. *Waller* and Dr. *Nuton*, who also attended, did not declare their Opinions: Dr. *W.* excused himself, that he had not time to consider the Question; and Dr. *N.* said it was against his Conscience, or words to that effect, to have a Hand in Blood. I suppose with this tacit Reserve, except it were in hopes of being Advocate of the Admiralty, whose Business it is (if prosecuting Pirates and Malefactors may be called so) to have a Hand in Blood.

But to conclude; I hope I have sufficiently proved what I designed, and have not only answered all the Objections that were then made, but have obviated whatever can reasonably be urged to the contrary.



to pay him Obedience, there it is most evident that they would never part with their Liberties, and give to a single Person so great Power over them, but for the sake of some suitable Return ; which can be no other than the Protection they receive by Government, which was the sole Motive, Reason and Design of their becoming Subjects ; nor can they be presumed to intend any thing but their common Good, not to pay Obedience upon any other Terms or Conditions, but for the Protection they are to receive : nay, had it been possible for Men to design it, they were morally incapable of binding themselves contrary to their Common Good and Prosperity. Though Protection cannot be had without Obedience, yet Obedience is only the Means, and in order to Protection ; which is the End for which alone Obedience is due ; and where that End cannot be had, all Ties are absolutely broken. And this has been the Sense and Practice of Mankind, who have always submitted to new Governors when their old Ones became incapable to protect them : But the Reason is much stronger, when instead of protecting, they design to oppress and ruin them ; then their own Good, which at first was the sole Reason of their Obedience, does as much oblige them to oppose them, as ever it did to submit to them.

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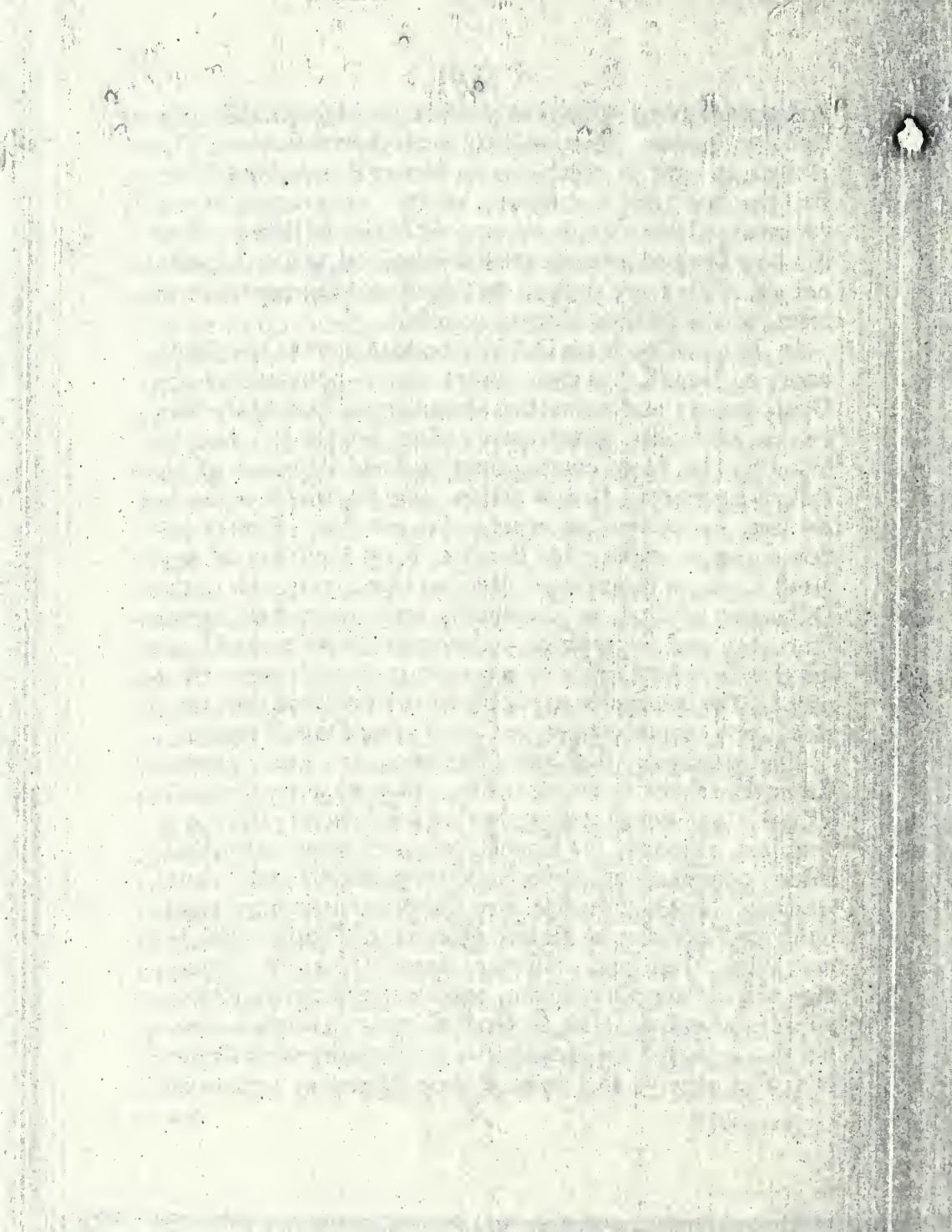
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